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APR 10 2006

OFFICE OF PETITIONS

In re Application of	:	
Howard Francis Gokey	:	
Application No. 10/084,786	:	DECISION
Filed: June 14, 2002	:	ON PETITION
For: BAR CLAMP CORNER	:	
SQUARING FIXTURE	:	

This is a decision in response to the correspondence filed July 18, 2005. The correspondence is properly treated as a Petition to Withdraw Holding of Abandonment under 37 CFR 1.181.

The petition is dismissed.

Background

Any further petition to revive the above-identified application must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.181." This is **not** final agency action within the meaning of 5 U.S.C. § 704.

Background

The above-identified application became abandoned for failure to timely and properly respond to the final Office action, mailed April 22, 2004. The Office action set a three (3) month period for reply. Extensions of time under 37 CFR 1.136(a) were available. No response having been received, the application became abandoned July 23, 2004. A Notice of Abandonment was mailed April 26, 2005.

The instant petition

Applicant files the instant petition wherein Applicant avers that a timely reply to the Office action was filed on July 19, 2004, and was received by this Office as evidenced by Applicant's receipt of an Advisory action mailed January 12, 2005. Applicant further

provides that in response to the Advisory Action he filed correspondence on March 21, 2005. In view of the foregoing, Applicant requests that the holding of abandonment be withdrawn.

Applicable Statute, Rules and MPEP

A proper reply to a final rejection, as stated in 35 U.S.C. § 113 "is limited to appeal in the case of rejection of any claim (§ 41.31 of this title), or to amendment as specified in § 1.114 or § 1.116."

The guidance provided in 37 CFR 1.135(b) proves instructive.

Prosecution of an application to save it from abandonment pursuant to paragraph (a) of this section must include such complete and proper reply as the condition of the application may require. The admission of, or refusal to admit, any amendment after final rejection or any amendment not responsive to the last action, or any related proceedings, will not operate to save the application from abandonment.
(Emphasis supplied).

The reply to a final rejection must be both complete and proper. Here, Applicant timely filed a reply, however, the reply was not complete, to wit - the reply failed to place the application in condition for allowance.

Applicant was so notified in an Advisory Action, mailed January 12, 2005¹. It is Applicant's responsibility to file a complete and proper reply as the condition of the case requires. Having failed to file a complete and proper reply by the due date for the reply, the application became abandoned. Thereafter, the reply to the Advisory Action filed on March 21, 2005, was moot. The application was abandoned and required revival and a proper reply.

Accordingly, the petition is dismissed.

Applicant is strongly urged to file a petition stating that the delay was unintentional. Public Law 97-247, § 3, 96 Stat. 317

¹ Applicant is advised that the mailing of the Advisory Action by this Office is a courtesy. As provided in In re Colombo, Inc., 33 USPQ2d 1530, 1532 (Comm'r Pat. 1994) (while the Office attempts to notify applicants of deficiencies in their responses in a manner permitting a timely correction, the Office has no obligation to notify parties of deficiencies in their responses in a manner permitting a timely correction).

(1982), which revised patent and trademark fees, amended 35 U.S.C. § 41(a)(7) to provide for the revival of an "unintentionally" abandoned application without a showing that the delay in was "unavoidable." An "unintentional" petition under 37 CFR 1.137(b) must be accompanied by the required fee, currently \$665.00.

The filing of a petition under 37 CFR 1.137(b) cannot be intentionally delayed and therefore must be filed promptly. A person seeking revival due to unintentional delay can not make a statement that the delay was unintentional unless the entire delay, including the delay from the date it was discovered that the application was abandoned until the filing of the petition to revive under 37 CFR 1.137(b), was unintentional. A statement that the delay was unintentional is not appropriate if petitioner intentionally delayed the filing of a petition for revive under 37 CFR 1.137(b).

Applicant is further advised to contact the Office of Independent Inventors, at 703-306-5568, or seek the services of a registered practitioner, for assistance in prosecuting his patent application.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Commissioner for Patents
 PO Box 1450
 Alexandria, VA 22313-1450

By FAX: (571) 273-8300
 Attn: Office of Petitions

By hand: Customer Service Window
 Randolph Building
 401 Dulany Street
 Alexandria, VA 22314

Telephone inquiries concerning this matter should be directed to the undersigned at (571) 272-3232.


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